Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**GN Docket No. 93-252**
FURTHER NOTICE OF PROPOSED RULE MAKING	)	
	)	
Regulatory Treatment of Mobile Services	)	

To the Commission:

COMMENTS OF RUSS MILLER RENTAL

William R. Miller
dba, Russ Miller Rental
3620 Byers Avenue
Fort Worth, Texas 76107
(817) 732-7791

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I. INTRODUCTION

1. Russ Miller Rental is a small SMR operator in the Dallas/Fort Worth, Texas market. We operate nine 800 megahertz trunked channels in Fort Worth, five in Sherman, five in Bowie, and five in Stephenville, Texas. In addition, we operate a conventional channel in Mineral Wells and Peoria, Texas. Until it was sold in May of this year we also operated a 10 channel 900 megahertz trunked SMR system in Cincinnati, Ohio. We have been in the two way radio business since 1972 and the SMR business since 1984. We are members of both AMTA and NABER. Mr. Miller is also a member of the Radio Club of America.

II. GENERAL

2. Russ Miller Rental has reviewed the Further Notice of Proposed Rule Making by the Commission, proposing regulatory treatment of mobile services on GN Docket 93-252. It is our belief that not enough time has been allowed for comments on this matter which is of such a wide scope and serious nature that it will re-chart the course of the entire wireless mobile communications industry for the next several decades. Nevertheless we have prepared our comments to the best of our ability given the short time allotted, although we would have preferred to address some of these issues much more in depth.

III. SUMMARY

3. We have held in depth discussions on the proposed rule changes with our attorneys as well as other small SMR operators which are our peers. We have reached a consensus amongst ourselves and are believe we are able to constructively comment on this Further Notice of Proposed Rule Making.

4. We generally support the changes and tentative conclusions proposed by the Commission and feel that a lot of thought has gone into the new proposed rules. In particular we feel that the Commission's discussion of the issues shows great insight into the issues addressed and the various alternative scenarios presented. We do, however find

there are a number of issues which we believe will have an undesired impact on the various services affected by them and offer suggestions accordingly.

5. We also generally support the positions of AMTA on these matters. Where we differ with either the Commission's or AMTA's positions, we address those issues specifically, otherwise we remain silent, except where we feel the need to reinforce the Commission's or AMTA's views.

IV. CONGRESSIONAL OBJECTIVE

6. The Commission notes that a principal objective of Congress in revising Section 332 was to benefit consumers by promoting competition in the mobile services marketplace. Congress created CMRS as a new classification of mobile services to ensure that similar mobile services are accorded similar regulatory treatment. Consistent with that objective, the Commission's role is to establish a regulatory regime under which the marketplace -- and not the regulatory arena -- shapes the development and delivery of mobile services to meet the demands and needs of consumers. Reliance on market forces will ensure that the most efficient service providers prevail. This will create incentives for firms to offer innovative and improved services at the lowest possible costs, and will insure that investment decisions are driven by consumer demands rather than regulations.[1]

7. We strongly believe this philosophy is what Congress intended and wish to emphasize that we believe it is paramount to test all proposed rules against this fundamental idea.

V. 800 MHz SMR SERVICE

A. Substantial Similarity

8. We agree with the Commission and AMTA in their determinations of substantially similar services and believe the analogy used is sound. Both AMTA and the Commission correctly note, however that there is a difference in wide area digital ESMR service and traditional SMR service. Wide area digital ESMR closely approximates

[1] FNPR par. 12

cellular service, with a large number of channels and wide area coverage. There are currently two classes of ESMRs; Those with low power, low towers and frequency re-use and those with high power, high towers and limited frequency re-use. The former are used in primarily urban areas and the latter are more suitable for rural areas with low population density. As subscriber loading increases both types of ESMR systems will gradually reduce the coverage area of their sites and add additional sites within their defined operating area to reap more capacity from frequency re-use in much the same way as cellular did during its evolution. The traditional analog SMR usually offers primarily dispatch type service with limited interconnect and other than its trunking and privacy features is more akin to Part 90 community repeater operation.

9. Traditional SMR also has the capability to provide the same cellular like features as wide-area digital ESMR with conversion to digital technology and incorporation of wide-area filings or in cooperation with other traditional SMRs. This is how wide-area digital ESMR evolved with the help of consolidators. While there are still opportunities for conversion of traditional analog SMRs to wide area digital ESMRs,[2] in most areas of the country spectrum is already exhausted and/or consolidated and not available for assignment.

B. Technical and Operational Rules

1. Traditional SMR

10. Traditional SMRs generally operate a limited number of frequencies at any particular site, although they may have multiple sites in a self defined area which usually fits their subscriber's traffic patterns. Not infrequently a traditional SMR must utilize other traditional SMRs in the area in order to provide the communications range their customers demand. Normally system linking or networking is not used as, until recently, there has not been equipment manufactured which readily lended itself to this function and was available at a reasonable cost.

[2]See par. 1 above.

11. Most urban traditional SMRs are currently loaded with dispatch subscriber units to the point of saturation and as a result offer little or no telephone interconnect. By contrast, most rural SMRs offer primarily telephone interconnect, as there is not usually enough dispatch type customer demand to create enough income to pay for the SMR system. Rural SMRs have been able to effectively establish themselves with telephone interconnect type service as they were operational long before the cellular RSA operators were. Rural SMRs are now feeling competitive pressure from the cellular RSA operators and are seeing a significant erosion of their customer base due to the inexpensive cellular subscriber equipment, higher cellular capacity (less probability of blocking), better quality of interconnection and wider cellular service area.

12. Traditional SMRs are now, and will likely continue to team up with each other in order to be more competitive. This usually involves secondary use by one SMR's subscribers of another SMR's system, normally at some sort of reduced rate or reciprocal usage arrangement between the SMRs.

13. In order to compete effectively with wide-area ESMRs, (which will be offering its customers a combination full duplex phone, dispatch radio, alpha-numeric pager, text messaging and facsimile interface) traditional SMRs must be allowed the regulatory flexibility to migrate to new technologies as they become available, including digital formats such as ESMR. In some cases an urban SMR would be happy to just increase its capacity by converting to digital technology, but faced with significant competition from ESMRs (a traditional SMR is no threat to an ESMR) will need to offer the same enhanced services as ESMRs (although on a much smaller scale) in order to retain its existing subscriber base. To the extent the traditional SMR has or is able to obtain the necessary frequencies to implement a pseudo-wide-area system, it should be allowed to do so. It is the publicly stated marketing intention of Nextel to address the traditional SMR subscribers first when loading its ESMR systems.

2. Technical Rules

14. We see no need to change the power and antenna height, emission masks, bandwidth or frequency stability rules. In the SMR service there is a vast installed and mature subscriber base which is accustomed to the system range and coverage areas they currently enjoy and a great deal of turmoil would ensue if these parameters were changed.

3. Channel Assignment and Service Area

15. SMR licensees are currently assigned spectrum in five channel blocks for trunked systems and one channel at a time for conventional systems. Licensees can accumulate additional spectrum upon demonstration of adequate system loading, subject to channel availability. In virtually all areas of the country, except the most sparsely populated areas, no channels are available. As a result consolidation of SMR operators has occurred. This consolidation has led to the current ESMR technology and wide-area ESMR systems.

16. This consolidation process has resulted in ESMR systems with self defined service areas based upon population densities and marketing plans. It has also resulted in non-contiguous spectrum holdings by the ESMR operators, unlike cellular and PCS which have contiguous spectrum and are regulated to defined service areas, such as MSAs, RSAs, MTAs and BTAs. However, the ESMR equipment is frequency agile and does not require contiguous spectrum. This creates a problem for the ESMR operator and the Commission in defining service areas and modifying base station locations within the service areas.

17. We see this as a minor problem which can be left to the market forces to sort out as these systems mature. The market forces have to date worked extremely well in allowing The ESMR operators to consolidate channels in their areas of interest. Most wide-area ESMR filings contain all of the frequencies that an ESMR operator either owns or manages within its self-defined service area at every site where they can be located, taking into account co-channel holdings by other SMR or ESMR operators. We propose that the Commission allow ESMR operators to add stations or relocate their stations

within the operator's self defined service area as minor modifications, much like Part 22 fill in stations, so long as the relocations do not extend the service area or encroach upon other licensee's 70 mile co-channel protection (or other existing short-spaced protection).

18. We are already seeing channel trading among ESMR licensees where a smaller operator in an area will trade its channels in that area to a larger operator in the same area, who happens to hold channels in another area where the roles are reversed. In addition, further consolidation is occurring (some of it between ESMR operators) as ESMR operators seek to enhance their positions in their markets. We do not believe that ESMR operators should be afforded contiguous spectrum by regulation. If an ESMR operator desires contiguous spectrum over its service area, then it should turn to the marketplace to accomplish that.

19. The 800 MHz frequency band has, in most areas, matured to a viable combination of dispatch and interconnect service offerings. There is a already a very large installed customer base operating on these frequencies. It is our opinion that the disruption of service to subscribers and resultant loss of productivity due to loss of man hours that would result from any re-allocation of these frequencies to achieve a contiguous spectrum assignment negates any benefits that would be derived from doing so. At some point in the future we foresee most of the entire 15 MHz of the 800 MHz frequency band being used for some type of digital ESMR-like service. The increased capacity that will be gained, coupled with the user convenience of having a single, do-all widget type of communications device that would replace the current multitude of devices now being used will create a considerably greater demand and public awareness of mobile communications, which in turn will increase productivity for that much larger base of users.

a. Licensing Procedures

20. Licensing in the heretofore private 800 MHz services should, to the extent practical, allow for the standard Part 22 public notice period and the petition to deny

procedures in order to prevent abuses of the system and ensure that the licensees are of such character that they are eligible for a license. However, petitions to deny should not be allowed for frivolous purposes, such as increased competition to the petitioner. We believe that the 800 MHz spectrum is currently used to the extent that windows to file competing applications will not serve the public interest and will only delay the delivery of services to the public. At this stage of development in the 800 MHz band, it does not increase competition as there is not enough unlicensed 800 MHz available to create new viable competitors.

Respectfully submitted,

Russ Miller Rental

By: William R. Miller

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